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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,

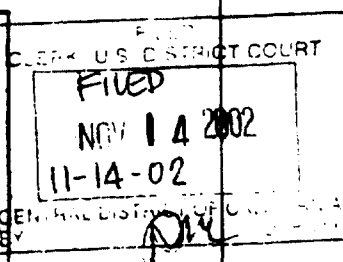
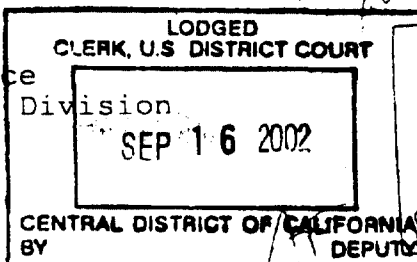
Plaintiff,

v.

BUENA VISTA MINES, INC., a
California corporation,
HAROLD J. BIAGGINI, and
EDWARD C. BIAGGINI, III

Defendants.

AND RELATED COUNTERCLAIMS
AND CROSS-CLAIMS



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NO. CV 98-7226-SVW (RNBx)

CONSENT DECREE

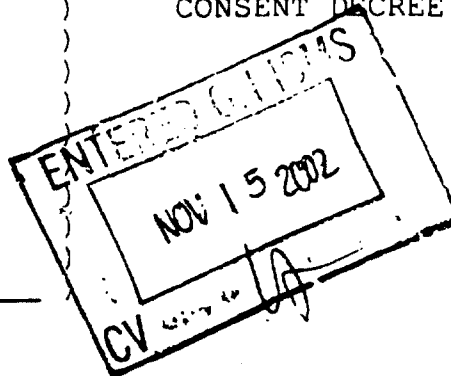


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1 I. BACKGROUND

2 A. The United States of America ("United States"), on
3 behalf of the Administrator of the United States Environmental
4 Protection Agency ("EPA"), filed a complaint in this matter
5 pursuant to Section 309(b) and (d) of the Clean Water Act
6 ("CWA"), 33 U.S.C. §§ 1319(b) and (d), for injunctive relief and
7 assessment of civil penalties for the discharge of pollutants in
8 violation of certain conditions of the National Pollutant
9 Discharge Elimination System ("NPDES") permits issued to Buena
10 Vista Mines, Inc. The United States' complaint was subsequently
11 amended to add, in lieu of the CWA counts, claims under Sections
12 106 and 107 of the Comprehensive Environmental Response,
13 Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and
14 9607, as amended ("CERCLA"), seeking injunctive relief, civil
15 penalties, treble damages, and reimbursement of response costs
16 incurred or to be incurred for response actions taken or to be
17 taken at or in connection with the release or threatened release
18 of hazardous substances at the Buena Vista/Klau Mine Superfund
19 Site in San Luis Obispo County, California ("the Site").

20 B. The Parties (as defined below) agree that the CWA counts
21 identified in the original complaint are dismissed with
22 prejudice.

23 C. Defendants Harold J. Biaggini, Edward C. Biaggini, III,
24 and Buena Vista Mines, Inc. ("Settling Defendants") do not admit
25 any liability to the United States arising out of the
26 transactions or occurrences alleged in the complaint. The
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1 Settling Defendants brought counterclaims in this matter against
2 the United States under CERCLA asserting that the United States
3 is liable at the Site. The United States does not admit any
4 liability to the Settling Defendants arising out of the
5 transactions or occurrences alleged in the counterclaims. Third-
6 party defendant County of San Luis Obispo does not admit any
7 liability to the Settling Defendants (or to the United States)
8 arising out of the transactions or occurrences alleged in the
9 third-party complaint brought by the Settling Defendants.

10 D. The Settling Defendants have asserted their inability to
11 pay the full amount of the United States' response costs. The
12 United States has reviewed the Financial Information submitted by
13 the Settling Defendants to determine whether they are financially
14 able to pay response costs incurred and to be incurred at the
15 Site. Based upon this Financial Information, the United States
16 has determined that the Settling Defendants are able to pay the
17 amount specified in Section VI.

18 E. EPA conducted a Preliminary Assessment/Site Investiga-
19 tion of the Site and has preliminarily scored the Site using the
20 Hazard Ranking System. EPA has determined that the Site scores
21 high enough to make it eligible for the National Priorities List.

22 F. The Parties agree, and this Court by entering this
23 Consent Decree finds, that this Consent Decree has been
24 negotiated by the Parties in good faith, that settlement of this
25 matter will avoid prolonged and complicated litigation between
26 the Parties, and that this Consent Decree is fair, reasonable,
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1 and in the public interest.

2 THEREFORE, with the consent of the Parties to this Decree,
3 it is ORDERED, ADJUDGED, AND DECREED: ~~THE COURT~~

4 II. JURISDICTION

5 1. This Court has jurisdiction over the subject
6 matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and
7 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal
8 jurisdiction over Settling Parties (as defined below). The
9 Settling Parties consent to and shall not challenge entry of this
10 Consent Decree or this Court's jurisdiction to enter and enforce
11 this Consent Decree.

12 III. PARTIES BOUND

13 2. This Consent Decree is binding upon the United
14 States, and upon the Settling Parties and their successors and
15 assigns. Any change in ownership or corporate or other legal
16 status, including, but not limited to, any transfer of assets or
17 real or personal property, shall in no way alter the status or
18 responsibilities of the Settling Parties under this Consent
19 Decree.

20 IV. DEFINITIONS

21 3. Unless otherwise expressly provided herein, terms
22 used in this Consent Decree which are defined in CERCLA or in
23 regulations promulgated under CERCLA shall have the meaning
24 assigned to them in CERCLA or in such regulations. Whenever
25 terms listed below are used in this Consent Decree or in any
26 appendix attached hereto, the following definitions shall apply:

1 a. "CERCLA" shall mean the Comprehensive Environmental
2 Response, Compensation, and Liability Act of 1980, as amended, 42
3 U.S.C. § 9601, et seq.

4 b. "Consent Decree" shall mean this Consent Decree and
5 all appendices attached hereto. In the event of conflict between
6 this Consent Decree and any appendix, this Consent Decree shall
7 control.

8 c. "Day" shall mean a calendar day. In computing any
9 period of time under this Consent Decree, where the last day
10 would fall on a Saturday, Sunday, or federal holiday, the period
11 shall run until the close of business of the next working day.

12 d. "DOJ" shall mean the United States Department of
13 Justice and any successor departments, agencies or
14 instrumentalities of the United States.

15 e. "EPA" shall mean the United States Environmental
16 Protection Agency and any successor departments, agencies or
17 instrumentalities of the United States.

18 f. "EPA Hazardous Substance Superfund" shall mean the
19 Hazardous Substance Superfund established by the Internal Revenue
20 Code, 26 U.S.C. § 9507.

21 g. "Existing Contamination" shall mean any hazardous
22 substances, pollutants or contaminants, present or existing on or
23 under the Site, or that have migrated from the Site, as of the
24 effective date of this Agreement, or that migrate from the Site
25 after the effective date of this Agreement.

1 h. "Fair Market Value" shall, except in the event of a
2 foreclosure or transfer by deed or other assignment in lieu of
3 foreclosure, mean the price at which the Property or any portion
4 thereof would change hands between a willing buyer and a willing
5 seller under actual market conditions, neither being under any
6 compulsion to buy or to sell and both having reasonable knowledge
7 of relevant facts. In the event of a transfer by foreclosure,
8 "Fair Market Value" shall mean the amount obtained at the
9 foreclosure sale. In the event of a transfer by a deed or other
10 assignment in lieu of foreclosure, "Fair Market Value" shall mean
11 the balance of the mortgage on the Property or any portion
12 thereof at the time of the transfer.

13 i. "Financial Information" shall mean the financial
14 documents submitted to the United States by the Settling
15 Defendants as identified in Appendix A.

16 j. "Interest" shall mean interest at the rate
17 specified for interest on investments of the EPA Hazardous
18 Substance Superfund established by 26 U.S.C. § 9507, compounded
19 annually on October 1 of each year, in accordance with 42 U.S.C.
20 § 9607(a). The applicable rate of interest shall be the rate in
21 effect at the time the interest accrues. The rate of interest is
22 subject to change on October 1 of each year.

23 k. "Net Sales Proceeds" shall mean the total value of
24 all consideration received by Buena Vista Mines, Inc. for each
25 Transfer (or if the consideration cannot be determined, the Fair
26 Market Value of the Property or any portion thereof) less (i) the
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1 balance of mortgages and liens on the Property or any portion
2 thereof (other than any mortgage held by one of the Settling
3 Defendants), (ii) closing costs (including appraisal costs and
4 real estate commissions incurred by a California-licensed real
5 estate broker other than one of the Settling Defendants) limited
6 to those reasonably incurred and actually paid by Buena Vista
7 Mines, Inc. associated with the Transfer of the Property or any
8 portion thereof, and (iii) federal and state taxes owed on the
9 proceeds. Buena Vista Mines, Inc. shall provide EPA with
10 documentation sufficient to show the total value of all consider-
11 ation received by Buena Vista Mine, Inc. for each Transfer (or if
12 the consideration cannot be determined, the Fair Market Value of
13 the Property or any portion thereof) at the time of each
14 Transfer, the amount of the proceeds of the Transfer, and the
15 amounts corresponding to items (i) through (iii) above. This
16 documentation shall include, but not be limited to, the report of
17 an appraisal (to be paid for by Buena Vista Mines, Inc., but
18 deductible as part of the closing costs as set forth above),
19 performed by a California-licensed appraiser. The documentation
20 shall also include, either as part of the report or separately,
21 (1) a tax statement showing the assessed valuation of the
22 Property or any portion thereof for each of the three years
23 immediately preceding the Transfer and (2) a schedule showing all
24 outstanding indebtedness on the Property or any portion thereof.

25 1. "Paragraph" shall mean a portion of this Consent
26 Decree identified by an Arabic numeral or an upper or lower case

1 letter.

2 m. "Parties" shall mean the United States and the
3 Settling Parties.

4 n. "Plaintiff" shall mean the United States.

5 o. "Property" shall mean the parcels of land described
6 in Appendix B.

7 p. "RCRA" shall mean the Solid Waste Disposal Act, 42
8 U.S.C. § 6901, et seq. (also known as the Resource Conservation
9 and Recovery Act).

10 q. "Section" shall mean a portion of this Consent
11 Decree identified by a Roman numeral.

12 r. "Settling Defendants" shall mean Buena Vista Mines,
13 Inc., Harold J. Biaggini, and Edward C. Biaggini III.

14 s. "Settling Parties" shall mean the Settling
15 Defendants and the County of San Luis Obispo.

16 t. "Site" shall mean the Buena Vista/Klau Mine
17 Superfund site in San Luis Obispo County, California, generally
18 designated as Township 26S and 27S, Range 10E, Sections 2, 3, 4,
19 33, and 34 of the U.S. Geological Survey Series ("USGS"), Mount
20 Diablo Base & Meridian, Adelaida 15 minute Quadrangle and
21 Township 26S, Range 10E, Section 33 USGS Mount Diablo Base &
22 Meridian, Adelaida 15 minute Quadrangle. The "Site" includes all
23 County or public roads or rights-of-way within these general
24 boundaries.

25 u. "Transfer" shall mean each sale, assignment,
26 conveyance, or exchange by Buena Vista Mines, Inc. (or its
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1 successors or heirs) of the Property, or any portion thereof, or
2 of an entity owning the Property or any portion thereof, where
3 title to the Property (or any portion or interest thereof) or to
4 the entity owning the Property or any portion thereof (i) is
5 transferred and Fair Market Value is received in consideration,
6 or (ii) is transferred involuntarily by operation of law,
7 including foreclosure and its equivalents following default on
8 the indebtedness secured, in whole or in part, by the Property,
9 or any portion thereof, including, but not limited to, a deed or
10 other assignment in lieu of foreclosure. A Transfer does not
11 include a transfer pursuant to an inheritance or a bequest.

12 v. "United States" shall mean the United States of
13 America, including its departments, agencies and instrumenta-
14 lities.

15 V. STATEMENT OF PURPOSE

16 4. By entering into this Consent Decree, the mutual
17 objective of the Parties is to resolve the alleged liabilities of
18 the Parties at the Site as provided in the Covenant Not to Sue by
19 Plaintiff in Section IX, the Covenant Not to Sue by the Settling
20 Parties in Section XI, and subject to the Reservations of Rights
21 by United States in Section X. With respect to the County of San
22 Luis Obispo, the cash payment made in accordance with Section VI,
23 below, includes a premium.

24 VI. PAYMENT OF RESPONSE COSTS

25 5. Within forty-five (45) days of notice of entry of
26 this Consent Decree, Settling Defendants shall pay to the EPA
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1 **Five Hundred Thousand Dollars** (\$500,000) and the County of San
2 Luis Obispo shall pay to the EPA **One Hundred Thousand Dollars**
3 (\$100,000).

4 6. Payments shall be made by FedWire Electronic Funds
5 Transfer ("EFT") to the U.S. Department of Justice account in
6 accordance with current EFT procedures, referencing the EPA
7 Region and Site Spill ID Number 09FM and DOJ Case Number 90-5-1-
8 1-4467/1. Payments shall be made in accordance with instructions
9 provided to Settling Parties by the Financial Litigation Unit of
10 the U.S. Attorney's Office in Central District of California
11 following lodging of the Consent Decree.

12 7. At the time of payment, the Settling Parties shall
13 send notice that payment has been made to EPA and DOJ in accor-
14 dance with Section XVI (Notices and Submissions) and to Joseph
15 Schmidt, U.S. EPA, Chief, General Accounting Section, Policy and
16 Management Division (PMD-5), 75 Hawthorne Street, San Francisco,
17 California 94105.

18 8. The total amount to be paid pursuant to Paragraph
19 5 shall be deposited in the Buena Vista/Klau Mine Site Special
20 Account within the EPA Hazardous Substance Superfund to be
21 retained and used as needed to conduct or finance response
22 actions at or in connection with the Site or, if no longer needed
23 to conduct or finance such response actions, to be transferred by
24 EPA to the EPA Hazardous Substance Superfund.

25 9. Payment of Proceeds of Sale of Property. Buena
26 Vista Mines, Inc. agrees that it will not sell, assign, convey,
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1 encumber, or exchange the Property, or any portion thereof except
2 by means of a Transfer. Such Transfer shall not occur until any
3 easement or covenant required under Section XIII of this Decree
4 is recorded as required by that Section.

5 a. In addition to the payment made under Paragraph 5,
6 Buena Vista Mines, Inc. shall pay to the United States 66 and
7 2/3% of the Net Sales Proceeds of the Transfer of the Property or
8 any portion thereof occurring on or after January 1, 2002.

9 Payments shall be made to the United States, as set forth in
10 Subparagraph b, below, within thirty (30) days of the effective
11 date of the Transfer of the Property or portion of the Property,
12 or thirty (30) days after entry of this Consent Decree in the
13 case of Transfers occurring between January 1, 2002 and entry of
14 this Consent Decree.

15 b. Payments under Subparagraph a, above, shall be made
16 to the United States in the following priority:

17 (i) to EPA in an amount equal to the then
18 outstanding balance of its response costs; then

19 (ii) in the event that additional proceeds remain,
20 that amount shall be divided evenly between EPA and BLM, unless
21 otherwise agreed to by those agencies.

22 Payment to EPA shall be made by certified or cashier's check made
23 payable to "EPA Hazardous Substance Superfund." The check, or a
24 letter accompanying the check, shall identify the name and
25 address of the party making payment, the Site name, the EPA
26 Region and Site/Spill ID # 09FM, and DOJ Case Number 90-5-1-1-

1 4467/1, and shall be sent to:

2 Mellon Bank, EPA Region 9
3 Attn: Superfund Accounting
4 P.O. Box 360863M
Pittsburgh, Pennsylvania 15251

5 Payment to EPA shall be deposited in accordance with Paragraph 8,
6 above. Payment made to BLM shall be by certified or cashier's
7 check made payable to the Central Hazardous Materials Fund
8 ("CHF") of the Department of the Interior for deposit into the
9 CHF, to be used for the costs of response actions at the Site.

10 Payment to BLM shall be sent to:

11 Central Hazardous Materials Fund
12 Account No. 2645
13 c/o National Business Center
14 U.S. Bureau of Land Management
15 BC 610
P.O. Box 25047
Building 50, Denver Federal Center
Lakewood, Colorado 80225

16 Buena Vista Mines, Inc. shall send all notices that payment has
17 been made in accordance with Paragraph 7, above.

18 c. This provision is not intended to provide payments
19 to the United States in excess of the amount of response costs
20 incurred and to be incurred by the United States at the Site. In
21 the event that more than \$ 3.5 million is paid to the United
22 States pursuant to this provision, documentation as provided by
23 this paragraph will be provided to support the costs in excess of
24 \$3.5 million. EPA will provide an itemized cost summary based on
25 the information obtained in EPA's Superfund Cost Recovery Package
26 Imaging and On-line System ("SCORPIOS"), or an equivalent system,

1 documenting the additional costs incurred by EPA. BLM will
2 provide an itemized cost summary, documenting the additional
3 costs incurred by BLM. Each agency incurring costs will provide
4 its cost accounting on a periodic basis after such costs are
5 incurred.

6 d. At least thirty (30) days prior to any such
7 Transfer, Buena Vista Mines, Inc. shall notify the United States
8 of the proposed transfer, which notice shall include a
9 description of the property to be sold, the identity of the
10 purchaser, the terms of the transfer, the consideration to be
11 paid, and a copy of the Transfer agreement. The proposed sales
12 price must be at least equal to the Fair Market Value of the
13 Property or any portion thereof based upon an appraisal obtained
14 within one (1) year of the Transfer, unless the United States
15 agrees that a lesser price is appropriate under the circum-
16 stances. Buena Vista Mines, Inc. shall notify the United States
17 of the completion of the Transfer within the (10) days of the
18 date of closing and shall include with such notification a copy
19 of the closing binder, including final executed documentation for
20 the conveyance and a work sheet setting forth the Net Sales
21 Proceeds and the amount payable to EPA.

22 e. In the event of a Transfer of the Property or any
23 portion thereof, Buena Vista Mines, Inc. shall continue to be
24 bound by all the terms and conditions, and subject to all the
25 benefits, of this Consent Decree, except if the United States and
26 Settling Defendants modify this Consent Decree in writing.

1 Nothing in this Paragraph obligates Buena Vista Mines, Inc. to
2 Transfer the Property or any portion thereof.

3 VII. FAILURE TO COMPLY WITH CONSENT DECREE

4 10. Interest on Late Payments. If either the Settling
5 Defendants or the County of San Luis Obispo fails to make its
6 payment under Paragraph 5 by the required due date, Interest
7 shall continue to accrue on the unpaid balance through the date
8 of payment.

9 11. Stipulated Penalty.

10 a. If any amounts due under Paragraph 5 are not paid
11 by the required date, the Settling Party that is responsible for
12 payment shall be in violation of this Consent Decree and shall
13 pay, as a stipulated penalty, in addition to the Interest
14 required by Paragraph 10, \$750 per violation per day that such
15 payment is late.

16 b. Stipulated penalties are due and payable within
17 thirty (30) days of the date of the demand for payment of the
18 penalties by EPA. All payments to EPA under this Paragraph shall
19 be identified as "stipulated penalties" and shall be made by
20 certified or cashier's check made payable to "EPA Hazardous
21 Substance Superfund." The check, or a letter accompanying the
22 check, shall reference the name and address of the party making
23 payment, the Site name, the EPA Region and Site Spill ID Number
24 09FM, and DOJ Case Number 90-5-1-1-4467/1, and shall be sent to:

25 Mellon Bank, EPA Region 9
26 Attn: Superfund Accounting
27 P.O. Box 360863M
28 Pittsburgh, Pennsylvania 15251

1 c. At the time of each payment, the Settling Party
2 responsible for payment shall send notice that payment has been
3 made to EPA and DOJ in accordance with Section XVI (Notices and
4 Submissions) and to Joseph Schmidt, U.S. EPA, Chief, General
5 Accounting Section, Policy and Management Division (PMD-5), 75
6 Hawthorne St., San Francisco, CA. 94105.

7 d. Penalties shall accrue as provided in this
8 Paragraph regardless of whether EPA has notified the delinquent
9 Settling Party of the violation or made a demand for payment, but
10 need only be paid upon demand. All penalties shall begin to
11 accrue on the day after payment is due and shall continue to
12 accrue through the date of payment. Nothing herein shall prevent
13 the simultaneous accrual of separate penalties for separate
14 violations of this Consent Decree.

15 12. If the United States brings an action to enforce
16 this Consent Decree, the delinquent Settling Party(ies) shall
17 reimburse the United States for all costs of such action,
18 including but not limited to costs of attorney time, subject to
19 the Settling Party's(ies') statutory rights under the Equal
20 Access to Justice Act, 28 U.S.C. § 2412, as amended.

21 13. Payments made under this Section shall be in
22 addition to any other remedies or sanctions available to
23 Plaintiff by virtue of any Settling Party's failure to comply
24 with the requirements of this Consent Decree.

25 14. Notwithstanding any other provision of this
26 Section, the United States may, in its unreviewable discretion,
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1 waive payment of any portion of the stipulated penalties that
2 have accrued pursuant to this Consent Decree. Payment of
3 stipulated penalties shall not excuse any delinquent Settling
4 Party from payment as required by Section VI or from performance
5 of any other requirements of this Consent Decree.

6 VIII. NOTICE OF FEDERAL LIEN

7 15. EPA shall file a Notice of Federal Lien against
8 the portion of the Site owned by Buena Vista Mines, Inc. in the
9 County Clerk-Recorder's Office, San Luis Obispo County, State of
10 California. Such Notice of Federal Lien shall reflect the terms
11 set out in Paragraph 9, above, and refer to the EPA access and
12 institutional control authorities in Section XIII of the Consent
13 Decree.

14 16. Within sixty (60) days after closing occurs on the
15 sale of the portion of the Site owned by Buena Vista Mines, Inc.,
16 EPA shall file a Release of Notice of Federal Lien in the County
17 Clerk-Recorder's Office, San Luis Obispo County, State of
18 California. The Release of Notice of Federal Lien shall release
19 the Notice of Federal Lien and shall not release any other lien
20 or encumbrance which may exist upon the Site.

21 IX. COVENANT NOT TO SUE BY PLAINTIFF

22 17. Except as specifically provided in Section X
23 (Reservation of Rights by United States), the United States
24 covenants not to sue or to take administrative action against the
25 Settling Parties, or their employees acting in their capacities
26 as such, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C.

1 §§ 9606 and 9607(a), with regard to the Site or the Existing
2 Contamination. With respect to present and future liability,
3 this covenant shall take effect upon receipt by EPA of all
4 amounts required by Paragraph 5 of Section VI (Payment of
5 Response Costs) and any amount due under Section VII (Failure to
6 Comply with Consent Decree). This covenant not to sue is
7 conditioned upon the satisfactory performance by the Settling
8 Parties of their obligations under this Consent Decree. This
9 covenant not to sue is also conditioned upon the veracity and
10 completeness of the Financial Information provided to EPA by the
11 Settling Defendants. If the Financial Information is
12 subsequently determined by EPA to be false or, in any material
13 respect, inaccurate, the Settling Defendants shall forfeit all
14 payments made pursuant to this Consent Decree and this covenant
15 not to sue and the contribution protection in Paragraph 26 shall
16 be null and void. Such forfeiture shall not constitute liqui-
17 dated damages and shall not in any way foreclose the United
18 States' right to pursue any other causes of action arising from
19 the Settling Defendants' false or materially inaccurate informa-
20 tion. This covenant not to sue extends only to the Settling
21 Parties and does not extend to any other person.

22 X. RESERVATION OF RIGHTS BY UNITED STATES

23 18. The United States reserves, and this Consent
24 Decree is without prejudice to, all rights against the Settling
25 Parties with respect to all matters not expressly included within
26 the Covenant Not to Sue by United States in Paragraph 17.

1 Notwithstanding any other provision of this Consent Decree, the
2 United States reserves all rights against the Settling Parties
3 with respect to:

4 a. liability for failure of any Settling Party to meet
5 a requirement of this Consent Decree;

6 b. criminal liability;

7 c. liability for damages for injury to, destruction
8 of, or loss of natural resources, and for the costs of any
9 natural resource damage assessments;

10 d. liability resulting from conduct by the Settling
11 Parties, their successors, assignees, lessees or sublessees, that
12 exacerbates Existing Contamination;

13 e. liability resulting from the release or threat of
14 release of hazardous substances, pollutants or contaminants at or
15 from the Site after the effective date of this Agreement, not
16 within the definition of Existing Contamination;

17 f. liability arising from the past, present, or future
18 disposal, release or threat of release of a hazardous substance,
19 pollutant, or contaminant outside of the Site, not within the
20 definition of Existing Contamination; and

21 g. any and all contribution claims that may be brought
22 against Buena Vista Mines, Inc. by the United States associated
23 with the dam and reservoir located on public lands managed by the
24 Bureau of Land Management adjacent to and south of the Buena
25 Vista Mine (Lot 37), in the event the State of California, or any
26 of its departments or agencies, undertakes an action against the
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1 United States regarding those public lands.

2 19. Notwithstanding any other provision of this
3 Consent Decree, EPA reserves, and this Consent Decree is without
4 prejudice to, the right to reinstitute or reopen this action, or
5 to commence a new action seeking relief other than as provided in
6 this Consent Decree, if the Financial Information provided by the
7 Settling Defendants, or the financial certification made by the
8 Settling Defendants in Paragraph 34, is false or, in an material
9 respect, inaccurate.

10 20. Notwithstanding the covenant not to sue set forth
11 in Paragraph 17 above, or any other provision of this Consent
12 Decree, the United states reserves its rights to respond to
13 contamination, whether Existing Contamination or other
14 contamination, at or from the Site whenever response may be
15 necessary to protect human health or the environment. Such
16 response may include requiring that Buena Vista Mines, Inc. or
17 its successors (acting through their officers or agents, as
18 necessary) implement deed restrictions or similar controls that
19 run with the land to prevent or restrict a particular use of the
20 Site.

21 XI. COVENANT NOT TO SUE BY THE SETTLING PARTIES

22 21. The Settling Parties covenant not to sue and agree
23 not to assert any claims or causes of action against the United
24 States, or its contractors or employees, with respect to the
25 Site, the Existing Contamination, or this Consent Decree,
26 including but not limited to:

1 a. any direct or indirect claim for reimbursement from
2 the Hazardous Substance Superfund based on Sections 106(b)(2),
3 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607,
4 9611, 9612, or 9613, or any other provision of law;

5 b. any claim arising out of response actions at or in
6 connection with the Site, including any claim under the United
7 States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal
8 Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common
9 law; or

10 c. any claim against the United States pursuant to
11 Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613,
12 relating to the Site.

13 Except as provided in Paragraph 23 (Waiver of Claims) and Para-
14 graph 28 (Waiver of Claim-Splitting Defenses), these covenants
15 not to sue shall not apply in the event the United States brings
16 a cause of action or issues an order pursuant to the reservations
17 set forth in Paragraph 18(c) - (g), or the State of California
18 brings an action for natural resource damages, but only to the
19 extent that any claim brought by a Settling Party arises from the
20 same response action, response costs, or damages action that the
21 United States or the State of California is seeking pursuant to
22 the applicable reservation.

23 22. Nothing in this Consent Decree shall be deemed to
24 constitute approval or preauthorization of a claim within the
25 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
26 300.700(d).

23. Subject to Paragraph 21, the Settling Parties agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site or the Existing Contamination, including for contribution, against any other person, unless such person asserts a claim or cause of action relating to the Site or the Existing Contamination against a Settling Party.

24. The pending counterclaims brought by the Settling Defendants are hereby dismissed with prejudice, subject to the reservations set forth in Paragraph 21 and Paragraph 23, above.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Except as provided in Paragraph 23 (Waiver of Claims), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 23, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

26. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Parties and the United States, including the United States Department of Interior and

1 the United States Army Corps of Engineers, are entitled, as of
2 the date of entry of this Consent Decree, to protection from
3 contribution actions or claims as provided by Section 113(f)(2)
4 of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in
5 this Consent Decree. The "matters addressed" in this Consent
6 Decree are all response actions taken or to be taken and all
7 response costs incurred or to be incurred, at or in connection
8 with the Site or the Existing Contamination, by the United States
9 or any other person. The "matters addressed" in this Consent
10 Decree do not include those response costs or response actions as
11 to which the Settling Parties have reserved their rights under
12 this Consent Decree (except for claims for failure to comply with
13 this Decree), in the event that a Settling Party asserts such
14 rights against another Settling Party coming within the scope of
15 such reservations.

16 27. The Settling Parties also agree that, with respect
17 to any suit or claim for contribution brought against them for
18 matters related to this Consent Decree, they will notify EPA and
19 DOJ in writing within twenty (20) days of service of the
20 complaint or claim upon it. In addition, the Settling Parties
21 shall notify EPA and DOJ within twenty (20) days of service or
22 receipt of any Motion for Summary Judgment, and within twenty
23 (20) days of receipt of any order from a court setting a case for
24 trial, for matters related to this Consent Decree.

25 28. In any subsequent administrative or judicial
26 proceeding initiated by the United States for injunctive relief,
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1 recovery of response costs, or other relief relating to the Site,
2 including any such subsequent proceeding where the Settling
3 Defendants may assert claims against the United States as
4 provided in this Consent Decree, the Parties shall not assert,
5 and may not maintain, any defense or claim based upon the
6 principles of waiver, *res judicata*, collateral estoppel, issue
7 preclusion, claim-splitting, or other defenses based upon any
8 contention that the claims raised in the subsequent proceeding
9 were or should have been brought in the instant case; provided,
10 however, that nothing in this Paragraph affects the enforce-
11 ability of the Covenant Not to Sue by Plaintiff set forth in
12 Section IX.

13 XIII. ACCESS AND INSTITUTIONAL CONTROLS

14 29. If access to the Site by EPA is needed to
15 implement response activities at the Site, EPA will provide at
16 least ten (10) days advance written notice to Buena Vista Mines,
17 Inc. of its planned activities. If written notice within ten
18 (10) days is not practicable, telephone notice within less than
19 ten (10) days' time will suffice.

20 30. If access and/or land/water use restrictions are
21 needed to implement response activities at the Site, Buena Vista
22 Mines, Inc. or its successors (acting through their officers or
23 agents, as necessary) shall:

24 a. commencing on the date of lodging of this Consent
25 Decree, provide the United States and its representatives,
26 including EPA and its contractors, with access at all reasonable
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1 times to the Site for the purpose of conducting any response
2 activity related to the Site, including, but not limited to, the
3 following activities:

4 1. monitoring, investigation, removal, remedial
5 or other activities at the Site;

6 2. verifying any data or information submitted to
7 the United States;

8 3. conducting investigations relating to
9 contamination at or near the Site;

10 4. obtaining samples;

11 5. assessing the need for, planning, or
12 implementing additional response actions at or near the Site;
13 and

14 6. determining whether the Site or other property
15 is being used in a manner that is prohibited or restricted, or
16 that may need to be prohibited, or restricted, by or pursuant to
17 this Consent Decree;

18 b. commencing on the date of lodging of this Consent
19 Decree, refrain from using the Site, or such other property, in
20 any manner that would interfere with or adversely affect the
21 implementation, integrity or protectiveness of the removal or
22 remedial measures performed or to be performed at the Site; and

23 c. If EPA so requests, execute and record in the
24 Recorder's Office of San Luis Obispo County, State of California,
25 an easement or covenant, running with the land, that (i) grants a
26 right of access for the purpose of conducting response activities
27

1 at the Site and (ii) grants the right to enforce such land/water
2 use restrictions as EPA may determine are necessary to implement,
3 ensure non-interference with, or ensure the protectiveness of the
4 response actions to be performed at the Site. Buena Vista Mines,
5 Inc. or its successors (acting through their officers or agents,
6 as necessary) shall grant the access rights and the rights to
7 enforce the land/water use restrictions to one or more of the
8 following persons, as determined by EPA: (i) the United States,
9 on behalf of EPA, and its representatives, (ii) the State and its
10 representatives, and/or (iii) other appropriate grantees. The
11 easement or covenant shall be enforceable under the laws of the
12 State of California and acceptable under the Attorney General's
13 Title Regulations promulgated pursuant to 40 U.S.C. 255. Prior
14 to recording the easement or covenant, Buena Vista Mines, Inc. or
15 its successors (acting through their officers or agents, as
16 necessary) shall provide EPA the opportunity to review and
17 approve the proposed easement or covenant to ensure that it
18 contains the necessary legal requirements, including the appli-
19 cable rights of access or institutional controls. Upon EPA's
20 request, Buena Vista Mines, Inc. or its successors (acting
21 through their officers or agents, as necessary) shall provide a
22 current title commitment or report prepared in accordance with
23 the U.S. Department of Justice Standards for the Preparation of
24 Title Evidence in Land Acquisitions by the United States (1970)
25 ("Standards"). Within fifteen (15) days of EPA's approval and
26 acceptance of the easement or covenant, Buena Vista Mines, Inc.

1 or its successors (acting through their officers or agents, as
2 necessary) shall update the title search and, if it is determined
3 that nothing has occurred since the effective date of the
4 commitment or report to affect the title adversely, record the
5 easement or covenant with the Recorder's Office of San Luis
6 Obispo County. Within thirty (30) days of recording the easement
7 or covenant, Buena Vista Mines, Inc. or its successors (acting
8 through their officers or agents, as necessary) shall provide EPA
9 with final title evidence acceptable under the Standards and a
10 certified copy of the original recorded easement or covenant
11 showing the clerk's recording stamp.

12 31. If EPA determines that land/water use restrictions
13 in the form of state or local laws, regulations, ordinances or
14 other governmental controls, are needed to implement response
15 activities at the Site, ensure the integrity and protectiveness
16 thereof, or ensure non-interference therewith, Buena Vista Mines,
17 Inc. or its successors (acting through their officers or agents,
18 as necessary) shall cooperate with EPA's efforts to secure such
19 land/water use restrictions.

20 32. Notwithstanding any provision of this Consent
21 Decree, the United States retains all of its access authorities
22 and rights, as well as all of its rights to require land/water
23 use restrictions, including enforcement authorities related
24 thereto, under CERCLA, RCRA, and any other applicable statute or
25 regulations.

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XIV. COOPERATION

33. Buena Vista Mines, Inc. recognizes that the implementation of any future response actions at the Site may interfere with its use of the Site and may require closure of any operations or a part thereof. Buena Vista Mines, Inc. or its successors (acting through their officers or agents, as necessary) agree to cooperate fully with EPA in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Buena Vista Mines, Inc.'s (or its successor's) operations by such entry and response.

XV. CERTIFICATION

34. Each of the Settling Defendants hereby certify that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42

U.S.C. § 6927; and

b. as to each of the Settling Defendants, submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time the Settling Defendants execute this Consent Decree.

XVI. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and the Settling Parties, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-5-1-1-4467/1)
P.O. Box 7611
Washington, D.C. 20044-7611

and

David B. Glazer
Mark A. Rigau
Environment and Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

1 As to EPA:

2 Buena Vista/Klau Mine Site Attorney
3 U.S. Environmental Protection Agency
4 Office of Regional Counsel (ORC-3)
75 Hawthorne Street
San Francisco, California 94105

5 and

6 Joseph Schmidt
7 Chief, General Accounting Section
8 U.S. Environmental Protection Agency
Policy and Management Division (PMD-5)
75 Hawthorne Street
San Francisco, California 94105

10 As to BLM:

11 Central Hazardous Materials Fund
12 Account No. 2645
13 c/o National Business Center
U.S. Bureau of Land Management
BC 610
P.O. Box 25047
14 Building 50, Denver Federal Center
Lakewood, Colorado 80225

16 As to Settling Defendants:17 As to Buena Vista Mines, Inc.:

18 1148 Market Avenue
19 Morro Bay, California 93442
Telephone: (805) 772-2158

20 As to Harold J. Biaggini:

1148 Market Avenue
21 Morro Bay, California 93442
Telephone: (805) 772-2158

23 As to Edward C. Biaggini, III:

1148 Market Avenue
24 Morro Bay, California 93442
Telephone: (805) 772-5453

25

26

27

28

1 As to County of San Luis Obispo:

2 Noel King
3 Director of Public Works
4 County of San Luis Obispo
5 Room 207
6 County Government Center
7 San Luis Obispo, California 93408

8 XVII. RETENTION OF JURISDICTION

9 36. This Court shall retain jurisdiction over this
10 matter for the purpose of interpreting and enforcing the terms of
11 this Consent Decree and resolving disputes among the Parties
12 arising under the Decree.

13 XVIII. INTEGRATION/APPENDICES

14 37. This Consent Decree and its appendices constitute
15 the final, complete and exclusive Consent Decree and
16 understanding between the Parties with respect to the settlement
17 embodied in this Consent Decree. The Parties acknowledge that
18 there are no representations, agreements or understandings
19 relating to the settlement other than those expressly contained
20 in this Consent Decree. The following appendices are attached to
21 and incorporated into this Consent Decree:

22 "Appendix A" is a list of the financial documents submitted
23 to EPA by Settling Defendants; and

24 "Appendix B" is a list of the property owned by Buena Vista
25 Mines, Inc.

26 XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

27 38. This Consent Decree shall be lodged with the Court
28 for a period of not less than thirty (30) days for public notice

1 and comment. The United States reserves the right to withdraw or
2 withhold its consent if the comments regarding the Consent Decree
3 disclose facts or considerations which indicate that this Consent
4 Decree is inappropriate, improper, or inadequate. The Settling
5 Parties consent to the entry of this Consent Decree without
6 further notice.

7 39. If for any reason this Court should decline to
8 approve this Consent Decree in the form presented, this Consent
9 Decree is voidable at the sole discretion of any Party and the
10 terms of the Consent Decree may not be used as evidence in any
11 litigation between the Parties.

12 XX. SIGNATORIES/SERVICE

13 40. Each undersigned representative of the Settling
14 Parties and the Assistant Attorney General for the Environment
15 and Natural Resources Division of the United States Department of
16 Justice certifies that he or she is authorized to enter into the
17 terms and conditions of this Consent Decree and to execute and
18 bind legally such Party to this document.

19 41. The Settling Parties hereby agree not to oppose
20 entry of this Consent Decree by this Court or to challenge any
21 provision of this Consent Decree, unless the United States has
22 notified the Settling Parties in writing that it no longer
23 supports entry of the Consent Decree.

24 42. The Settling Parties shall identify, on the
25 attached signature page, the name and address of an agent who is
26 authorized to accept service of process by mail on its behalf
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1 with respect to all matters arising under or relating to this
2 Consent Decree. The Settling Parties hereby agree to accept
3 service in that manner and to waive the formal service require-
4 ments set forth in Rule 4 of the Federal Rules of Civil Procedure
5 and any applicable local rules of this Court, including but not
6 limited to, service of a summons.


7 XXI. ATTORNEYS' FEES AND COSTS

8 43. With the exception of expert deposition costs, as
9 previously agreed, the Parties agree to bear their own costs and
10 attorneys' fees.

11 XXII. FINAL JUDGMENT

12 44. Upon approval and entry of this Consent Decree by
13 the Court, this Consent Decree shall constitute the final
14 judgment between the United States and the Settling Parties. The
15 Court finds that there is no just reason for delay and therefore
16 enters this judgment as a final judgment under Fed. R. Civ. P. 54
17 and 58.

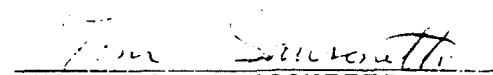
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19 SO ORDERED THIS 13 DAY OF November, 2002.

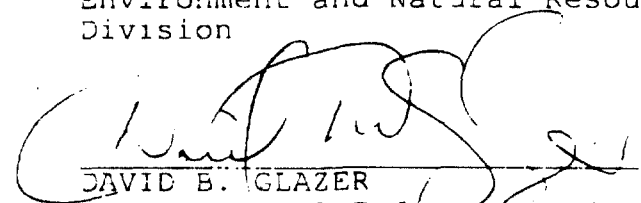
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23 HON. STEPHEN V. WILSON
24 United States District Judge
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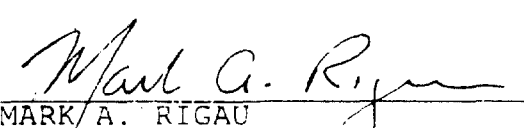
1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Buena Vista Mines, Inc., et al., No.
3 CV 98-7226-SVM (R/Bx), relating to the Buena Vista/Klau Mine
4 Superfund Site, subject to the provisions of Paragraph 38 of the
5 Decree.

6
7
8 FOR THE UNITED STATES OF AMERICA

9 Dated: _____



THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division

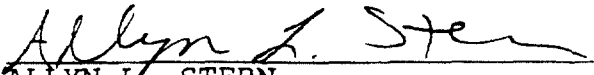
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11 
DAVID B. GLAZER
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

12
13
14
15
16
17 
MARK A. RIGAU
Environmental Defense Section
Environment and Natural Resources
Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Buena Vista Mines, Inc., et al., No.
3 CV 98-7226-SVM (RNBx), relating to the Buena Vista/Klau Mine
4 Superfund Site, subject to the provisions of Paragraph 38 of the
5 Decree.

6 Dated: 9/5/2002


7 JANE DIAMOND
8 Director, Superfund Division
9 U.S. Environmental Protection
10 Agency, Region IX
11 75 Hawthorne Street
12 San Francisco, California 94105

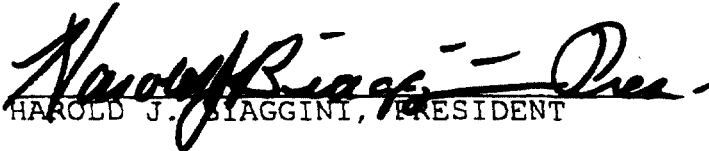

13 ALLYN L. STERN
14 Senior Counsel
15 U.S. Environmental Protection
16 Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, California 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Buena Vista Mines, Inc., et al., No.
3 CV-98-7226 SVW (RNBx), relating to the Buena Vista/Klau Mine
4 Superfund Site.

5 FOR DEFENDANT BUENA VISTA MINES, INC.:

6
7 Date:

6 Aug. 2002


HAROLD J. BIAGGINI, PRESIDENT

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9
10
11 Agent Authorized to Accept Service on Behalf of Above-signed
12 Party:

13 Name: Harold J. Biaggini

14 Title: President

15 Address: 1148 Market Avenue
16 Morro Bay, California 93442
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Buena Vista Mines, Inc., et al., No.
3 CV-98-7226 SVW (RNBx), relating to the Buena Vista/Klau Mine
4 Superfund Site.

5
6 FOR DEFENDANT HAROLD J. BIAGGINI

7 Date:

8 6 Aug. 2002 Harold J. Biaggini

9 HAROLD J. BIAGGINI
10 1148 Market Avenue
11 Morro Bay, California 93442
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Buena Vista Mines, Inc., et al., No.
3 CV-98-7226 SVW (RNBx), relating to the Buena Vista/Klau Mine
4 Superfund Site.

5 FOR DEFENDANT EDWARD C. BIAGGINI, III

6 Date:

8-6-02

Edward C. Biaggini III
7 EDWARD C. BIAGGINI, III
8 1148 Market Avenue
9 Morro Bay, California 93442
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Buena Vista Mines, Inc., et al., No. CV-98-7226 SVW (RNBx), relating to the Buena Vista/Klau Mine Superfund Site.

FOR THIRD-PARTY DEFENDANT COUNTY OF SAN LUIS OBISPO

Date:

8/06/02

Shirley Bianchi

SHIRLEY BIANCHI

Chair, County Board of Supervisors

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Viki M. Shelby

Title: Clerk, Board of Supervisors of the County of San Luis Obispo

Address: 144 Monterey Street
San Luis Obispo, California 93408

Financial Documents Relied Upon
Appendix A

1. Buena Vista Mines, Inc. corporate income tax returns for years ended December 31, 1960 through December 31, 2000
2. Individual income tax return (Form 1040) for Harold Biaggini for December 31, 1995 through December 31, 1999
3. Individual income tax return (Form 1040) for Edward C. Biaggini, III for tax years 1996-2000
4. 2 B Partnership income tax return (Form 1065) for the years ending December 31, 1996 through December 31, 2000
5. Buena Vista Mines, Inc. Detail Trial Balance for various periods from December 31, 1993 through December 31, 1999
6. Listing of current fair market value of various parcels of real estate owned by Harold Biaggini
7. Buena Vista Mines, Inc. Response to First Set of Interrogatories
8. Harold Biaggini loan application provided to First Bank, dated March 6, 2001 and related documents
9. Deposition of Harold J. Biaggini
10. Deposition of Edward C. Biaggini, III
11. Deposition of Carol Freedman

List of property owned by Buena Vista Mines, Inc.
Appendix B

1. Buena Vista Mine: Lot No. 37, embracing a portion of the south half of Section 33 in Township 26 South, Range 10 East, Mount Diablo Base and Meridian, in Salinas Mining District, in the County of San Luis Obispo, State of California, in the district of lands subject to sale at San Francisco, embracing 34.43 acres, more or less, and which said land is more particularly set forth and described in the patent issued therefor by the Government of the United States, and recorded in the office of the County Recorder of San Luis Obispo, State of California, in Book G, Page 360, of Patents, and reference being had to said record of said patent, a fuller and more complete description of said lands will appear, and upon which property what is known as the Buena Vista or Mahoney Quicksilver Mine is located.
2. Klau Mine: A portion of Lot 2, SEC 33 T26 S R10 E, Mount Diablo Meridian; Lots 3787A and 3787B within a portion of SEC 33 T 26S R10E, Mount Diablo Meridian; and the Capitola Mining Claim, the Last Chance Quartz Claim, the Santa Monica Claim, and the San Carlos Claim, within SEC 33 T26S R10E, Mount Diablo Meridian, all as further described and recorded in the office of the County Recorder of San Luis Obispo, State of California, Vol. 1328 Official Records P. 92.
3. Dodd Property: T26S & 27 R10E LESS MINS PTN SEC 34 33 3 & 4 (750 Klau Mine Rd, Radel, Paso Robles, CA)
Assessor's Parcel No. 014-331-013
4. Mineral Rights in Assessor's Parcel No. 905-001-630
5. Property: Assessor's Parcel No. 014172001

CERTIFICATE OF SERVICE BY MAIL

I, Bernice Yee, hereby certify and declare that:

1. I am over the age of 18 years and am not a party to this action.

2. I am employed by the U.S. Department of Justice and currently working at 301 Howard Street, Suite 1050, San Francisco, California 94105.

3. I am familiar with the office practices of the U.S. Department of Justice at the above location, including its mail processing practices.

4. I know that outgoing mail is deposited for collection with the United States Postal Service on the day of mailing and that overnight mail is collected from the above office location on the day of mailing.

5. Following the above described practices, on September 13, 2002, I caused a true copy of the foregoing CONSENT DECREE to be served upon the persons listed on the attached service list in the manner indicated.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 13, 2002, in San Francisco, California.


BERNICE YEE

SERVICE LIST

For Defendants Buena Vista Mines, Inc., Harold Biaggini, and
Edward Biaggini

Shaunna Sullivan, Esq. **By U.S. Mail**
Claire M. Corcoran
Sullivan & Associates
2238 Bayview Heights Drive
Suite C
Los Osos, California 93402

Donald E. Bradley, Esq. **By U.S. Mail**
Crowell & Moring LLP
2010 Main Street, Suite 1200
Irvine, California 92614

R. Timothy McCrum, Esq. **By Overnight Mail**
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

For Third-Party Defendant County of San Luis Obispo

Albert M. Cohen, Esq. **By Overnight Mail**
Christopher G. Foster, Esq.
Smiland & Khachigian
601 West Fifth Street
Seventh Floor
Los Angeles, CA 90071-1010

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA****Automated Document Delivery Service**

Notice pursuant to Rule 77(d) FRCiv.P

The attached copy is hereby served upon you pursuant to Federal Rule of Civil Procedure 77(d).

From: Name: United States District Court
312 North Spring Street
Los Angeles, CA 90012
Voice Phone: (213) 894-****

To: Name: David Glazer
Company:
301 Howard St, Ste 1050,
City/State: San Francisco, CA 94501-0000
Fax Number: 415-744-6476

Fax Notes:

Case 2:98-CV-07226 : USA V. BUENA VISTA MINE

Date and time of transmission: Friday, November 15, 2002 4:34:30 PM
Number of pages including this cover sheet: 44